

MTN Subscriber Agreement



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Please pay special attention to all these clauses below, which may limit MTN's responsibility, liabilities and legal responsibilities which MTN may have towards You and other persons. Please also take note that these clauses are deemed to be acknowledgments of fact by you and may limit and exclude your rights and remedies and/or liabilities against MTN and place various risks, liabilities, obligations and legal responsibilities on you.

1. Important Definitions

Activation means the date upon which your SIM Card is activated in accordance with these Terms and Conditions, which Activation allows you to access the MTN Network and make use of the Network Services.

ICASA means the Independent Communications Authority of South Africa.

Initial Contract Period or Contract period means the duration of your Contract, which is set out in the application form (24 months unless otherwise specified, which will commence from the date of Activation of the SIM Card ("Commencement Date").

2. The Contract

When you sign the application form attached to this contract you agree to all of the terms and conditions in all of the documents that apply between and you. The documents which form part of this contract are:

- This subscriber agreement (short form);
- the application form attached to this subscriber agreement;
- the package option terms or price plan terms;
- the Value Added Services ("VAS") application form;
- the VAS terms and conditions;
- Your CPD ("Customer Pick-up Document") which you receive with your mobile device;
- MTN's international roaming and calling application form and terms and conditions;
- MTN's migration addendum (if you apply to migrate from one package option to another);
- MTN's privacy policy, which can be found at www.mtn.co.za; and
- MTN's standard subscriber terms and conditions (long form).

You can obtain copies of all of the contract documents referred to above from any MTN store ,or online at www.mtn.co.za. The contract (including all the terms and conditions in each separate contract document) make up a legal agreement between you and us. If you have a problem or a question, relating to your contract or the goods and services provided to you by MTN, you will need to give us Proof of Delivery ('POD') and your MTN Invoice ('Bill') so please keep them in a safe place.

3. Ordering

When you place an order with MTN, provided that your order is accepted by MTN in accordance with its standard operating procedures, we will make every commercially reasonable effort to comply promptly with any supply and/or delivery requirements recorded in the order, but will not be liable to you or any other person in any manner whatsoever, insofar as the law allows, if the supply and/or delivery is delayed or cancelled.

4. Credit vetting

You acknowledge, consent to and accept that MTN will use a third party (i.e. a credit bureau) to register your details in order to assess your credit-worthiness for the purpose of determining whether to accept your application. MTN shall also use such third party to monitor or record the manner in which you have conducted your payments to MTN. To the extent allowed by law, you give up ("waive") any claims you may have against MTN relating to such disclosures.

5. Acceptance and Activation

Even if MTN has used agents or other go-betweens, the order by you is an offer made by you to MTN and will be considered after it has been received by MTN at MTN's premises. If MTN accepts your offer (which it does not have to accept), then MTN's acceptance will be the activation of the SIM Card. For the purposes of acceptance by MTN and conclusion of this contract, Activation will always be deemed to take place at MTN's premises. Upon Activation, this contract will become binding between MTN and You. Please note that connection charges apply to Activations.

6. RICA

- 6.1. Acceptance and Activation of any offer shall be subject to the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 as amended and any regulations thereto ("RICA")
- 6.2. You are required, in terms of the RICA, to register such SIM card with MTN, in a face-to-face process. You are required to provide MTN with a copy of - (i) your **original** identity document, passport or refugee document; (ii) a certified copy of an original identity document, passport or refugee document; or (iii) a certified copy of proof of residential address.
- 6.3. Proof of residence may be recorded in any of the following documentation: (i) bank statement (which must not be older than 3 (three) months or; (ii) rates and/or electricity account; or (iii) TV license; or (iv) insurance policy; or (v) agreement; or (v) New vehicle license document.
- 6.4. You acknowledge and accept that any failure by you to provide same will result in MTN not activating the SIM Card.
- 6.5. If you decide to give or sell your SIM Card to somebody else (except for a family member) both of you must approach a MTN RICA officer to initiate the change of ownership process. The person to whom you are giving / selling the SIM Card must provide their identity book and proof of residence to the MTN RICA officer.

7. Theft, loss or damage

- 7.1. All risk for loss, damage or theft of SIM Cards and mobile devices supplied by MTN to you will pass to You on delivery of the SIM Card and/or the mobile device (as the case may be) or to any person that You have chosen to accept receipt of such SIM Card and/or mobile device on your behalf.
- 7.2. By law, if a SIM Card is lost or stolen, you are required to immediately notify the South African Police Services in writing. If the SIM Card is lost or stolen you must also immediately notify MTN and request suspension of the SIM Card. Until your request for suspension of the SIM card is received by MTN, you will remain liable for all costs and charges relating to that SIM Card, including all usage charges arising from the use of the SIM Card.

8. Ownership of devices

MTN will be the owner of the mobile device until you have paid the purchase price of the mobile device (which may be included in your monthly subscription) in full, except that where this Contract is cancelled in terms of breach of contract or as per your cancellation rights under the Consumer Protection Act, then MTN will remain the owner of the mobile device until you have paid the purchase price of the mobile device in full, together with the cancellation fees.

9. Use of the SIM card and Mobile Device

- 9.1. You hereby warrant and undertake that you:-
 - 9.1.1. will not use or allow the network services for any improper, immoral, fraudulent or unlawful purpose;
 - 9.1.2. will not commercially exploit the network services nor allow the network services to be used for commercial purposes, including without limitation, the selling or reselling of the network services, bulk calling, bulk SMS, grey routing, least-cost routing (LCR) or fixed terminals, for commercial or business purposes. Any use of the network services outside of what is considered reasonable for private, non-commercial use, and in instances through mechanisms and/or automated systems and means not intended for personal use, will be considered as abuse;

- 9.1.3. will only use mobile devices approved by ICASA together with the SIM Card on the network;
- 9.1.4. recognize and agree that no right, title or interest in the software contained in each SIM Card or the software contained in a mobile device or the software contained in a mobile number related to each SIM Card issued to you, belongs to you or will belong to you. MTN recognizes that you will retain the use of your mobile number if you decide to port to another network or service provider; and
- 9.1.5. will not, and will not allow, any other person to reverse engineer, decompile, modify or tamper with the software contained in, or relating to, any SIM Card or mobile device.

10. Charges

- 10.1. You will pay all the applicable charges due by you to MTN at the rates detailed in the price list on MTN's Website and/or your package option/price plan terms and conditions. These charges will take into account the following charges, including but not limited to: the charges applicable to your package option/price-plan, monthly subscription, device charges, usage charge, and/or VAS charges these charges. MTN may amend these charges from time to time upon reasonable notice to you.
- 10.2. In addition to any other amounts which are payable by you in terms of this contract, you are required to pay MTN:
 - 10.2.1. the cancellation charges for early termination of the contract, in the event that MTN elects to cancel the contract, as a result of a breach of contract by you.
 - 10.2.2. the cancellation charges for early termination of the contract by you, should you elect to cancel this contract before expiry of the applicable period;
 - 10.2.3. a debit order return fee of R11.40 inclusive of Value Added Tax ("VAT") if you fail to make payment of any amount by the due date for payment and the amount was required to be paid by debit order;
 - 10.2.4. if there is a package migration/price-plan migration by you, the current migration fee and/or administration fee for the migration as detailed in the price list of MTN's Website at the time of the package migration/price-plan migration;
 - 10.2.5. to pay legal costs on an attorney and own client scale, which costs will be reasonably incurred by MTN if MTN takes any legal steps against you relating to your breach of this contract. You will also be required to pay collection costs reasonably incurred by MTN while trying to collect any amounts from you which are owed to MTN by you.

11. Payment terms

Our payment terms are 21 (twenty one) days from the date of invoice and must be paid to MTN at MTN's premises or into the bank account of MTN held at The Standard Bank of South Africa Limited or at another bank, provided that the 21st day falls within the same month as your invoice. If the 21st day falls in the next month, the invoice is due by the last day of the month. You must pay by way of debit order if MTN requires you to do so. The details of MTN's bank account shall be detailed in each monthly bill which MTN may send you. If payment is made by you via a debit order, other electronic means or any other intermediary, your bankers or other intermediaries will act as your agents. You will be responsible for the payment until it has been received by MTN at MTN's premises or by the bankers of MTN into MTN's bank account. MTN reserves the right to process your debit order via NAEDO (Non-authenticated early debit order).

12. Credit Limit

- 12.1. MTN may set a limit on the amount of the total charges which you may incur in any month and may change this limit from time to time. The limit on your charges is determined by MTN in accordance with MTN's credit-vetting criteria and you may request MTN to disclose this limit to you. If your actual charges exceed the limit set by MTN You will still be required to pay these charges.
- 12.2. You may also request MTN to set a limit on your behalf, although you will still be liable to MTN if your actual charges exceed the limit, and in which case you will still be required to pay these charges.

13. Access to Network Services

- 13.1. MTN may without any liability suspend your access to the network services if ("Suspension"):

- 13.1.1. any modification, maintenance or remedial work must be undertaken in relation to the network or the network services. MTN will use reasonable endeavors to reduce the period of the Suspension due to the modification, maintenance and remedial work and will endeavor to notify you of this Suspension in advance. MTN will not be required to notify you in advance when the modification, maintenance or remedial work is required due to an emergency; or
- 13.1.2. if you breach any term of this contract (including, but not limited to, when you fail to give to MTN all necessary documents stated on the application form or if you do not pay MTN any amount owing on a due date), MTN will notify you of the Suspension of your access to or use of the network services; or
- 13.1.3. You at any time exceed the limit of the total amount of charges which you may incur in any month, as MTN may set, from time to time. MTN will notify you of the Suspension of your access to the network services in these circumstances and MTN will end the Suspension of your access to the network services as soon as reasonably possible after you make a payment to MTN to reduce the amount of usage charges payable by you so that it is less than the limit that MTN may have set; or
- 13.1.4. if MTN is required to do so by law or by the ICASA; or
- 13.1.5. if MTN is of the reasonable belief that you have commercially exploited the network services.

14. International Roaming and International Calling

- 14.1. Even if a SIM Card has been Activated by MTN, the SIM Card will be barred from making calls to and from any place outside the Republic of South Africa, and will only be unbarred for a specified period on written request by you, received by MTN at least 5 (five) business days before the requested date of unbarring and in the form as may be reasonably required by MTN from time to time. MTN may refuse, acting reasonably, to unbar the SIM Card and may require you to first provide a security deposit in the amount decided by MTN in its reasonable discretion, before MTN unbars the SIM Card, even though MTN may not have required such deposit from you where you have used the international calling or international roaming services before.
- 14.2. *Please note that the use of International Roaming and/or International Calling is expensive. These services are available upon request by You. MTN shall request that you complete the relevant application form.*
- 14.3. *You understand and accept that international roaming costs are charged by third party network operators in the country being visited by you. These third party network operators will send your bill to MTN within 90 (ninety) days, therefore MTN will not be able to advise you in real time what your usage charges are.*
- 14.4. *MTN strongly advises that you consult your mobile device user manual to disable voice, SMS, data application and/or email settings when roaming outside the Republic of South Africa. MTN further advises that you make sure that you consult the terms and conditions of your mobile device applications downloaded by you or existing on your mobile device when you are roaming outside the Republic of South Africa. Failure to do so may result in you incurring additional costs on your international roaming bill.*

15. Inclusive Minutes, Messages, Data and Value Amounts

- 15.1. Where your package option/price-plan includes any inclusive minutes, SMS and/or data then there will be no usage charges for these inclusive minutes, SMS and/or data, which are included in your subscription charges. You will pay for any minutes, SMS and/or data which exceed the amount of minutes, SMS and/or data included in your package option/price-plan.
- 15.2. There are various rules and requirements relating to the inclusive minutes, SMS and/or data. The various rules and requirements relating to inclusive minutes, SMS and/or data may vary between different package options/price-plans can be found on the MTN Website. By using a particular package option/price-plan you consent to those rules and requirements and are bound by them.

16. Cancellation of the Contract

This Contract may be cancelled by you:

- 16.1. at any time by giving MTN at least 20 (twenty) business days' notice in writing (not by SMS) or in any other recorded manner and form. You should note that you will be required to pay all charges which are payable at the cancellation date and also a reasonable cancellation fee;

- 16.2. at the end of the Initial Contract Period, by giving to MTN a written notice (not by SMS) of cancellation before the end of the Initial Contract Period;
- 16.3. at the end of a particular Contract Renewal Period where this Contract is continuing on a month-to-month basis by giving MTN a written notice (not by SMS) of cancellation before the end of the relevant month;
- 16.4. if MTN is in breach of an obligation in this contract and fails to remedy this breach within 20 (twenty) business days after receiving a notice from you in writing (not by SMS) identifying the breach and stating that if the breach is not remedied you may cancel the contract. If you do wish to cancel this contract for this reason, after the expiry of the 20 (twenty) business days' notice period, you must send MTN a notice in writing (not by SMS) of the cancellation of this contract;
- 16.5. if you decide to port to another network or service provider, and have given MTN at least 20 (twenty) business days prior written notice (not by SMS);
- 16.6. by notice in writing (not by SMS) to MTN within 20 (twenty) days after MTN has given you notice of changes or amendments to (i) this contract, (ii) the repair, replacement and refund terms in the CPD, (iii) the charges or the price list; or (iv) the credit limit, except that You can only cancel this Contract where the changes or amendments meet the conditions set out in clause 19.3or
- 16.7. by notice in writing (not by SMS) to MTN within 20 (twenty) days after receiving a notice from MTN of the change, withdrawal or substitution of any value added service which form a part of your package option/price-plan.
- 16.8. Without limiting any of MTN's other remedies and rights against you, this contract may be cancelled by MTN immediately on written notice to you:
- 16.8.1. if you are in breach of this contract (which may include, but is not limited to, where you fail to pay any amount to MTN on a due date or in certain circumstances if you cancel a debit order) and you have failed to remedy that breach within 20 (twenty) business days after MTN has given you notice of such breach, provided that if the breach is not material, MTN will only cancel this contract where this is reasonable to do so;
- 16.8.2. if MTN is of the reasonable belief that you have commercially exploited the network services.
- 16.8.3. if you are sequestrated, liquidated, placed under judicial management or business rescue, whether provisionally or finally, and whether voluntarily or compulsory; or
- 16.8.4. If the license issued by ICASA in terms of which MTN is authorized and empowered to give you access to the network services, is cancelled for whatever reason.

17. Amounts You Must Pay if this Contract is Cancelled

- 17.1. If this contract is cancelled, you will be required to pay:
- 17.1.1. the monthly subscription applicable up to the cancellation date, except that if the cancellation date is not at the end of a particular month, then the monthly subscription for that last month will be pro-rated;
- 17.1.2. all the usage charges up to and including the cancellation date;
- 17.1.3. all other amounts which MTN is entitled to charge you up to the cancellation date or for any failure to make payment by you before or after the cancellation date; and
- 17.1.4. the cancellation charges, which will include (but may not be limited to) the balance of the purchase price of the mobile device.
- 17.2. You will also be required to pay MTN the balance of the purchase price of your mobile device if you migrate to a package option with a lower mobile device subsidy than the package option you are migrating from or if you migrate to a price plan with no mobile device.

18. Limitations and Exclusions of Liability

- 18.1. To the extent allowed by law, MTN will not be liable to you or to any other person for any loss or damage suffered (whether it is direct or indirect):-
- 18.1.1. if the network services are interrupted, suspended or cancelled for any negligent act or failure to act by MTN, or for circumstances outside of the control of MTN; or

- 18.1.2. if MTN does not supply or deliver any mobile device or SIM Card/s on the required date or time;
- 18.1.3. as a result of the use of any mobile device supplied to you by MTN relating to this contract (including the use of any self-service features available to you);
- 18.1.4. if your access to, or use of, the network services is Suspended in terms of this contract;
- 18.1.5. if MTN does not Suspend the provision of the network services to you after you have specifically requested MTN to do so in order to, amongst other things, limit the usage charges;
- 18.1.6. the loss or damage was caused by any negligent act or failure to act by MTN, its employees or its agents.
- 18.2. To the extent allowed by law, where MTN is liable to you for any reason, the cumulative maximum liability of MTN to you for all claims, actions, demands and proceedings of whatever nature and however arising (including, without limitation, for breach of contract, in delict, for all acts and omissions, and for negligence) shall in total be limited to the total value of the charges actually paid by you to MTN in terms of this contract.
- 18.3. To the extent allowed by law, in no event will MTN be liable to you for any loss of profits, loss of goodwill, loss of business opportunities, business interruptions, loss or destruction of data, damage to data, or for any indirect, consequential, special or exemplary losses or damages of whatever nature and however arising.

19. CHANGES TO THE SERVICES, CHARGES AND THIS CONTRACT

- 19.1. MTN may at any time make changes or amendments to:
 - 19.1.1. this contract, including all documents which form part of this contract; your package option/price-plan terms and conditions; and the VAS terms and conditions applicable to the value added service used by you.
 - 19.1.2. the charges or the prices listed on MTN'; and
 - 19.1.3. the limit of the usage charges set by MTN.
- 19.2. MTN will endeavor to give you at least 20 (twenty) business Days prior written notice (which includes notice by SMS) of any changes or amendments referred, but is entitled to give you a shorter period of notice or no prior notice where this is reasonable in the circumstances or where it is necessary in order to comply with law or with the requirements of ICASA.
- 19.3. You will be entitled to cancel the applicable network service(s) and/or any service forming part of your package option/price-plan which MTN seeks to amend within 20 (twenty) days after receiving the notice from MTN of any changes or amendments by giving written notice (not by SMS) to MTN, only where:
 - 19.3.1. the reason for the changes or amendments was not because they were necessary to comply with law or with the requirements of ICASA and they were also not approved by ICASA;
 - 19.3.2. in the case of changes or amendments to the charges or price list, these changes or amendments resulted in an increase to the charges or other amounts payable by you to MTN, were not approved by ICASA and were also not increases which MTN is entitled to make in terms of this contract; and
 - 19.3.3. in the case of changes or amendments to the credit limit set by MTN, the change or amendment has been a reduction of the credit limit and the reduction was not necessary to comply with law or with the requirements of ICASA.
- 19.4. If the cancellation notice is received by MTN from you after the date that the relevant change or amendment becomes effective (as specified in MTN's notice to you), then that change and amendment will still be valid and effective until the cancellation date.
- 19.5. All value added service are made available and provided at the discretion of MTN and MTN may change, withdraw or substitute them at any time by giving you at least 20 (twenty) business days prior written notice. MTN is entitled to give you a shorter period of notice or no prior notice where this is reasonable in the circumstances or where it is necessary in order to comply with law or with the requirements of the ICASA. If MTN withdraws any value added service which has a monthly subscription, then no further monthly subscription will be charged to you for that value added service after the withdrawal. Where you subscribe to a package option/price plan that includes free value added service, then there will be no reduction in your monthly subscription because that value added service is free.

19.6. If MTN changes, withdraws or substitutes any value added service that is provided to you, then you will be entitled to cancel this contract within 20 (twenty) days after receiving the notice from MTN of the change, withdrawal or substitution of the value added service, by giving written notice (not by SMS) to MTN.

19.7. If the cancellation notice is received by MTN from you after the date that the relevant change, withdrawal or substitution of a value added service becomes effective (as specified in MTN's notice to you), then that change, withdrawal or substitution will still be valid and effective until the cancellation date.

20. PERMISSION TO MARKET

20.1. To the extent allowed by law, by ticking the box on the application form,

20.1.1. You agree to MTN's privacy policy, including MTN's data collection, use and sharing practices, as set out in MTN's privacy policy which can be viewed at www.mtn.co.za.

20.1.2. You give MTN express permission to contact you by telephone, fax, SMS, MMS or email at the contact number/s and/or address you provided to MTN, for the purposes of marketing its products and/or services to you. This permission does not prevent you from opting out of receiving marketing communications from MTN (or opting in again) at any time in the future, and is subject at all times to your rights and obligations in terms of the Consumer Protection Act or any other applicable law to register a pre-emptive block or to demand that MTN no longer sends you any direct marketing communications.

21. INSURANCE

21.1. Your Mobile Device will not be insured by MTN and you will therefore be responsible for all loss, theft and/or damage to your mobile device, unless you have entered into a separate insurance agreement with an insurance provider of your choice to insure the mobile device.

22. ADDRESS AND NOTICE

22.1. If you and MTN will be entitled to change your physical address to any other physical address in South Africa, which is not a post office box, by giving written notice to each other. The new physical address will become that party's address for service of all legal documents 30 (thirty) days after the other party receives the notice this is the address where all legal documents will be served on you.

23. AGREEMENT BY YOU

2.1. You confirm that you have read and understand the terms and conditions of the contract and agree to be bound by them.

2.2. You confirm that you are aware and have been advised that there are additional terms and conditions not in this document that have been incorporated into this contract by reference agree to be bound by them.

2.3. You confirm that you are over the age of 18 (eighteen) years and that you are legally able to agree to the terms and conditions contained in the contract and to make the promises and undertakings therein.

Subscriber Name: _____

Signature: _____

Date: _____

Sales Consultant Name: _____

Signature: _____

Date _____